

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

CABLE NEWS NETWORK, INC.,

Plaintiff,

v.

FEDERAL BUREAU OF INVESTIGATION,

Defendant.

Civil Action No. 1:17-cv-01167-JEB

**DEFENDANT’S MOTION FOR A STAY OF PLAINTIFF’S MOTION FOR A
DETERMINATION OF DEFENDANT’S LIABILITY FOR REASONABLE
ATTORNEYS’ FEES AND COSTS (ECF NO. 89)
OR, IN THE ALTERNATIVE, FOR AN EXTENSION OF TIME TO FILE RESPONSE
THERE TO**

Defendant hereby moves the Court to stay consideration of Plaintiff’s Motion for a Determination of Defendant’s Liability for Reasonable Attorneys’ Fees and Costs (“Plaintiff’s Attorneys’ Fees Motion,” ECF No. 89) or, in the alternative, for an extension of time for defendant to file its response thereto. In support of this motion, defendant states as follows:

1. The procedural history of this case is set forth in the Court’s Memorandum Opinion of June 7, 2019 (ECF No. 86). Following that decision, the Court entered a final judgment that same day (ECF No. 85).
2. On July 5, 2019, defendant the Federal Bureau of Investigation (“FBI”) filed a motion to amend the Court’s opinion and order pursuant to Federal Rule of Civil Procedure 59(e).
3. On July 19, 2019, plaintiff filed its Attorneys’ Fees Motion, seeking a determination that the FBI is liable for fees and to set a briefing schedule regarding the amount of fees and costs to be awarded. The FBI’s response is currently due on August 2, 2019.

4. The FBI's Rule 59(e) motion remains pending. As a result, there is as yet no final judgment in the case. After the Rule 59(e) motion is resolved, the parties will then have sixty days in which to decide whether to appeal the new final judgment.

5. It would be premature for the Court to address either the liability of the FBI for fees, or the amount of any such fees, at this point in the litigation. The extent to which plaintiff will ultimately prevail in this lawsuit, that is, the precise information that will have been released as a result of this lawsuit, is as yet unknown and will not be known until there is a final, nonappealable judgment addressing the redactions at issue. The nature of the information ultimately released will also determine the crucial issue of whether there was any public benefit from this lawsuit. The above factors are central to the determination of whether plaintiff is both eligible for and entitled to fees. *See Cotton v. Heyman*, 63 F.3d 1115, 1117 (D.C. Cir. 1995).

6. The Local Rules recognize that the determination of attorneys' fees should ordinarily await a final judgment, *see* LCvR 54.2(a), and should also often await the determination as to whether to appeal, if not also the outcome of the appeal itself. *Id.* 54.2(b). The Rules also contemplate that the parties be given time to attempt to reach agreement on fees issue before a motion is filed. *Id.* 54.2(a).

7. Accordingly, for these reasons, the FBI requests that the Court order that further consideration of Plaintiff's Attorneys' Fees Motion, including the due date for the FBI to respond thereto, be stayed until further order of the Court.

8. In the alternative, the FBI respectfully requests an additional fourteen days, until August 16, 2019, to file its response to Plaintiff's Attorneys' Fees Motion. Undersigned counsel was out of the office on personal leave on July 19, 24, and 25, 2019, and was also occupied with preparing the government's reply brief in further support of its Rule 59(e) motion, also due on

August 2, 2019, during this time period. Accordingly, the government needs additional time to prepare and finalize its response.

9. The FBI also requests a brief extension pending the Court's ruling on the present motion.

10. On July 31, 2019, counsel for Plaintiff advised undersigned counsel by email that Plaintiff opposed the present motion.

WHEREFORE Defendant hereby moves for the Court to stay consideration of Plaintiff's Motion for a Determination of Defendant's Liability for Reasonable Attorneys' Fees and Costs or, in the alternative, for an extension of time to file its response thereto. A proposed order is submitted.

Dated: August 1, 2019

Respectfully submitted,
HASHIM M. MOOPPAN
Deputy Assistant Attorney General

MARCIA BERMAN
Assistant Director, Civil Division

/s/Carol Federighi
CAROL FEDERIGHI
Senior Trial Counsel
United States Department of Justice
Civil Division, Federal Programs Branch
P.O. Box 883
Washington, DC 20044
Phone: (202) 514-1903
Email: carol.federighi@usdoj.gov

Counsel for Defendant

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

CABLE NEWS NETWORK, INC.,

Plaintiff,

v.

FEDERAL BUREAU OF INVESTIGATION,

Defendant.

Civil Action No. 1:17-cv-01167-JEB

**[PROPOSED] ORDER GRANTING DEFENDANT’S MOTION FOR A STAY OF
PLAINTIFF’S MOTION FOR A DETERMINATION OF DEFENDANT’S LIABILITY
FOR REASONABLE ATTORNEYS’ FEES AND COSTS (ECF NO. 89)**

Upon consideration of Defendant’s Motion for a Stay of Plaintiff’s Motion for a Determination of Defendant’s Liability for Reasonable Attorneys’ Fees and Costs (“Plaintiff’s Motion”), any response thereto, and the entire record herein, and for good cause shown, it is hereby

ORDERED that Defendant’s Motion is **GRANTED**; and

IT IS FURTHER ORDERED that further consideration of Plaintiff’s Motion, including the due date for the FBI to respond thereto, be stayed until further order of the Court.

So ordered on this ____ day of _____, 2019.

James E. Boasberg
United States District Judge